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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91210981
Party	Defendant Millenia Productions, LLC
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Submission	Answer
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Date	07/17/2013
Attachments	Answer and Affirmative Defenses.pdf(232031 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

EZ NAILS, INC.,)	
)	
Opposer,)	
)	
v.)	Opposition No. 91210981
)	
Millenia Productions, LLC,)	
)	
Applicant.)	
_____)	

Commissioner of Trademarks
P. O. Box 1451
Alexandria, Virginia 22313-1451

Sir:

**APPLICANT’S ANSWER TO NOTICE OF OPPOSITION
AND AFFIRMATIVE DEFENSES**

Applicant, Millenia Productions, LLC (“Applicant”), for its answer to the Notice of Opposition filed by EZ NAILS, Inc. (“Opposer”) against application for registration of Applicant’s trademark Gel II (stylized) (the “Gel II Mark”), Serial No. 85/676,821, filed July 13, 2012, and published in the Official Gazette of December 11, 2012 (the “Mark”), pleads and avers as follows:

1. Applicant is without sufficient information to admit or deny the allegations of paragraph 1 and therefore denies the same.
2. Admitted.
3. Applicant is without sufficient information to admit or deny the allegations of paragraph 3 and therefore denies the same.
4. Denied.

5. Applicant admits the existence of the registrations and what the registrations grant on their face but otherwise denies the remaining allegations.

6. Applicant admits that copies of the registrations are attached as Exhibit A but is without sufficient information to admit or deny the allegations of paragraph 6 and therefore denies the same.

7. Denied.

8. Denied.

9. Admitted.

10. Applicant admits those dates appear on registration 4,034,360 but denies that Applicant's Gel II Mark has registered.

11. Applicant admits those dates appear on registration 4,320,847 but denies that Applicant's Gel II Mark has registered.

12. Applicant denies that it applied to register its Gel II Mark in standard character format in Class 2 but admits the remaining allegations of paragraph 12.

13. The answers to paragraphs 1 through 12 are incorporated by reference.

14. Because this is nothing but a conclusory statement of the law, Applicant denies the same.

15. Admitted.

16. Admitted.

17. Applicant admits it abandoned the 597 Mark but otherwise denies the remaining allegations.

18. Denied.

19. Applicant is without sufficient information to admit or deny the allegations of paragraph 19 and therefore denies the same.

20. Denied.

21. Denied.

22. Denied.

23. Applicant is without sufficient information to admit or deny the allegations of paragraph 23 and therefore denies the same.

24. Denied.

25. Denied.

26. Applicant is without sufficient information to admit or deny the allegations of paragraph 26 and therefore denies the same.

27. Denied.

28. Applicant is without sufficient information to admit or deny the allegations of paragraph 26 and therefore denies the same.

29. Denied.

30. Applicant is without sufficient information to admit or deny the allegations of paragraph 30 and therefore denies the same.

31. Denied.

32. The answers to paragraphs 1 through 12 are incorporated by reference.

33. Applicant is without sufficient information to admit or deny the allegations of paragraph 33 and therefore denies the same.

34. Because this is nothing but a conclusory statement of the law, Applicant denies the same.

35. Admitted.

36. Denied.

37. Applicant is without sufficient information to admit or deny the allegations of paragraph 37 and therefore denies the same.

38. Denied.

39. Applicant is without sufficient information to admit or deny the allegations of paragraph 39 and therefore denies the same.

40. Applicant is without sufficient information to admit or deny the allegations of paragraph 40 and therefore denies the same.

- 41. Denied.
- 42. The answers to paragraphs 1 through 12 are incorporated by reference.
- 43. Admitted.
- 44. Denied.
- 45. Denied.
- 46. Denied.
- 47. Denied.
- 48. Denied.

AFFIRMATIVE DEFENSES

In addition to the answers provided above, Applicant asserts the following affirmative defenses in response to Opposer's Notice of Opposition.

First Affirmative Defense

Opposer's Notice of Opposition fails to state a claim upon which relief can be granted.

Second Affirmative Defense

Applicant's Gel II Mark is not descriptive.

Third Affirmative Defense

No likelihood of confusion exists between Opposer's Gella marks and Applicant's Gel II Mark.

Fourth Affirmative Defense

Applicant's Gel II Mark has not been materially altered.

Fifth Affirmative Defense

Opposer's rights in and to its alleged Gella marks are generic or, in the alternative, merely descriptive of the goods sold under the marks. Opposer's alleged marks are therefore inherently unprotectable absent acquired distinctiveness, which the alleged Gella marks lack.

Sixth Affirmative Defense

Opposer failed to inform the United States Trademark Office that "gel" is a term of art in the nail industry.

Seventh Affirmative Defense

Opposer misrepresented to the trademark Examining Attorney that Gella had no significance in the trade or industry.

Eighth Affirmative Defense

Others have been using marks that incorporate “gel” for nail gel, such use being open, notorious and known to Opposer and such knowledge, in turn, being known to Applicant. During this time Opposer failed to take meaningful action to assert the claims against others on which it bases this Opposition, on which inaction Applicant has relied to its detriment. Opposer’s claims are consequently barred by the doctrines of laches, acquiescence and estoppel.

Ninth Affirmative Defense

Applicant reserves the right to supplement or otherwise add to its affirmative defenses of which it may become aware through discovery or otherwise.

WHEREFORE, Applicant requests as follows:

- a. This opposition be dismissed; and
- b. A registration for the Gel II Mark be issued to the Applicant.

Respectfully submitted,

Dated: July 17, 2013

/s/ Ginnie C. Derusseau

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Attorneys for Applicant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Applicant's Answer to Notice of Opposition and Affirmative Defenses has been served upon EZ Nails, Inc., 10540 Ashdale Street, Stanton, California 90680, by deposit in the United States Mail, in a sealed envelope with first class postage thereon fully prepaid, this 17th day of July 2013.

/s/ Ginnie C. Derusseau